

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CITY OF MEMPHIS

PLAINTIFF

VS.

CIVIL ACTION NO. 2:19-cv-02864

HORN LAKE CREEK BASIN INTERCEPTOR
SEWER DISTRICT; DeSOTO COUNTY,
MISSISSIPPI; CITY OF HORN LAKE,
MISSISSIPPI; and CITY OF SOUTHAVEN,
MISSISSIPPI

DEFENDANTS

Defendants' Response in Opposition to Plaintiff's Motion for Summary Judgment

Defendants Horn Lake Creek Basin Interceptor Sewer District and DeSoto County, Mississippi (collectively the "District") file this Response in Opposition to the City of Memphis ("City")'s Motion for Summary Judgment [Doc. # 90], as follows:

1. The City seeks summary judgment on its declaratory action despite the fact that the two Agreements between the parties contain no provision for expiration or for termination by either party.

2. The contracts themselves, as well as their context, purpose, and evidence of the parties' intent at the time of signing, all illustrate that the parties did not intend the contract for wastewater treatment to expire in September 2023. Rather, the contract is "subject to review and change agreeable to both parties" at that time.

3. Because there exist genuine disputes of many material facts regarding the parties' intentions and their continued obligations beyond 2023, the City's motion should be denied.

4. In support of this Response, Defendants simultaneously file their Memorandum of Law and Response to the City's Statement of Undisputed Material Facts. In further support, Defendants attach the following exhibits:

Exhibit “A” – Tim Verner, P.E. Expert Report

Exhibit “B” – Tim Verner deposition excerpts

Exhibit “C” – 1973-1974 Mississippi-Tennessee Correspondence, COM_000575-580

Exhibit “D” – Hugh Teaforde deposition excerpts

Exhibit “E” – 2008 Memphis Sewer System Report

Exhibit “F” – Robert Knecht deposition excerpts

Exhibit “G” – Green Book Vol 2 excerpts

Exhibit “H” – District Responses to City of Memphis Interrogatories excerpts

Exhibit “I” – Charles Davis deposition excerpts

Exhibit “J” – Technical Advisory Committee Report

Exhibit “K” - Memphis Resolution of Intent

Exhibit “L” – City of Memphis Responses to District Interrogatories excerpt

Exhibit “M” – Scott Morgan deposition excerpts

Exhibit “N” – City Contracts with Germantown and Bartlett

Exhibit “O” – Brad Davis, P.E. Expert Report

Exhibit “P” – Section 208 Plan Vol 1 excerpt

Exhibit “Q” – City EPA Payment File excerpt, COM_010608-10613

Exhibit “R” – City WIFIA Loan Application excerpt

Respectfully submitted, this the 13th day of September, 2021.

HORN LAKE CREEK BASIN INTERCEPTOR
SEWER DISTRICT

By: /s/ W. Abram Orlansky
W. Abram Orlansky

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DeSOTO COUNTY, MISSISSIPPI

By: /s/ Samuel Barber

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Certificate of Service

I hereby certify that on September 13, 2021, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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This the 13th day of September, 2021.

/s/ W. Abram Orlansky

W. Abram Orlansky